

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

KENNETH P. TEMPLETON,

Petitioner,

ORDER

v.

08-cv-422-slc

JODINE DEPPISCH, Warden,
Fox Lake Correctional Institution,

Respondent.

Kenneth P. Templeton, an inmate at the Fox Lake Correctional Institution, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He has paid the five dollar filing fee. The petition is before the court for preliminary review pursuant to Rule 4 of the Rules Governing Section 2254 Cases.

The subject of the petition is petitioner's conviction on July 9, 2007 in the Circuit Court for Dane County for his sixth offense of drunk driving. It is unclear from the petition whether petitioner pursued a direct appeal of the conviction. However, on or about June 18, 2008, petitioner did file a post-conviction motion pursuant to Wis. Stat. § 974.06, Wisconsin's collateral attack statute. Documents attached to the petition show that that motion is pending in the state circuit court.

A state prisoner seeking habeas relief from the federal court must first “exhaust[] the remedies available in the courts of the State.” 28 U.S.C. § 2254(b)(1)(A). It is plain that petitioner has not complied with this requirement. He has not yet received a ruling on his post-conviction motion, much less exhausted his state court appellate remedies. Petitioner must complete these steps before this court may entertain his petition. O’Sullivan v. Boerckel, 526 U.S. 838, 845 (1999) (to exhaust state court remedies, petitioner “must give the state courts one full opportunity to resolve any constitutional issues by invoking one complete round of the State’s established appellate review process,” including filing petition for discretionary review with state’s highest court). The fact that the district attorney may have missed his deadline for filing a response to petitioner’s motion does not excuse petitioner from pursuing his claims in state court first.

ORDER

IT IS ORDERED that the petition of Kenneth P. Templeton for a writ of habeas corpus is DISMISSED WITHOUT PREJUDICE for petitioner's failure to exhaust his state court remedies.

Entered this 23rd day of July, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge